

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6156 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

MALHOTRA INDUCTO CAST PVT. LTD. & ANR.
VERSUS
THE GUJARAT ELECTRICITY BOARD AND ANR.

Appearance:

MR SB VAKIL for the Petitioner
MR MG DOSHIT for the Respondent

Coram: S.K. Keshote,J
Date of decision:15/07/1997

C.A.V. JUDGMENT

#. The petitioners, by this petition under Article 226 of the Constitution of India, challenged the validity of the Development Loan Amount Scheme (hereinafter referred to as the 'Scheme') approved by the 1st respondent (hereinafter referred to as the 'Board'), vide its Resolution No.5599 dated 14.10.86 and the condition No.8 introduced thereafter in the Board's "Conditions and miscellaneous Charges for supply of electrical energy", the salient features whereof are set out in the Board's Commercial Circular No.530 dated 23.10.86. Further challenge has been made to the forced Loan Deposit of Rs.12 Lacs demanded by the respondents from the petitioners carrying simple interest of 5% p.a. and repayable on completion of seven years from the date of release of power supply to the petitioners as a condition for the grant of power connection with contract demand of 2000 KVA, communicated to the petitioners under the 2nd respondent's letter dated 5.11.86. Further prayer has been made for issuance of writ of Mandamus commanding the respondents to grant to the petitioners power connection with contract demand of 2000 KVA for proposed Unit No.2 without insisting or demanding payment of loan deposit amount of Rs.12 lacs as set out in paragraph 7 of the respondents' letter dated 5.11.86, annexure 'B'.

#. The first petitioner is a Company limited by shares and registered at no.4140 with the Registrar of Companies, Gujarat, under the provisions of the Companies Act, 1956, having its registered office at Anand Cloth Market, Sarangpur, Ahmedabad. The second petitioner is a shareholder as well as Joint Managing Director of the company. The company has its factories at plots No.4, 5, & 6, G.I.D.C. Estate, for manufacturing alloy/steel castings and grinding media balls and foundry industry. The petitioner company is running its Unit No.1 as a small scale industry in plot No.4 and is having power connection with demand of 480 KVA from the Board. The petitioner-company has set up its Unit No.2 in plot No.6 for the manufacture of all types of alloys and special steel castings to implement D.G.T.D. licence granted to the petitioner by the Central Government. The petitioner-company has installed in its Unit No.2, new Induction Furnace of 3 metric tonnes capacity of 1500 KW rating at a cost of Rs.60 Lacs.

#. The respondent-Board has been constituted under Section 5 of the Electricity (Supply) Act, 1948, (hereinafter referred to as 'the Act'). The Board is a body corporate having perpetual succession and common seal, with power to acquire and hold property and capable of suing and being sued by its name notified under sub

section (1) of Section 5 of the Act. The petitioner states that the Board is the 'State' within the meaning of Article 12 of the Constitution of India. The petitioner No.2, by his letter dated 27.11.94, communicated to the Board interest in reserve of power of 2000 KVA. That letter has been replied by the Board vide its letter dated 11.12.84 and the petitioners were called upon to pay Rs.12,250/- within one month towards power reserve deposit for reservation of power of 2000 KVA. The petitioner-company vide its letter dated 15.1.85 forwarded to the respondents, application for H.T. power supply of 2500 KVA as the demand of power increased. The Board called upon the petitioner to pay Rs.13,500/within one month towards power reservation deposit. However, the petitioner has subsequently informed the respondent that the power allotted of 2000 KVA may be sanctioned for the petitioner's Unit No.2. The amount of Rs.12,250/has been paid by the petitioner by Bank Draft dated 15.10.85 and other relevant documents and information has also been submitted to the Board. The respondents, by their letter dated 10.3.86 informed the petitioner that the Board was instructing its Executive Engineer (ONM) at Kadi to examine feasibility of providing H.T. power to the petitioner-company. The petitioner states that this letter aforesaid makes no mention of the impugned loan deposit. The Board has informed the petitioner that looking to the petitioners' load it may be necessary to augment transmission and distribution system sub-station and for that the petitioner will have to pay an estimated amount which would be communicated to the petitioner separately and that subject to the said payment power would be made available to the petitioner subject to such regulation as the State Government may impose on the supply, distribution, consumption or use thereof at the relevant time. The Board, vide its Resolution No.5599 dated 14.10.86 approved the scheme as a new condition No.8 in the Board's "Condition and Miscellaneous Charges for supply of electrical energy" relating to the advance loan to be taken from the consumers (other than agricultural) and contracted load is 25 H.P. and above. The Commercial Circular No.530 dated 23.10.86 came to be issued by the respondent setting out salient features of the Scheme as per the new condition No.8. The salient features inter alia are that the scheme would be applicable to fresh applicants and also to those applications other than agricultural and having contracted load of 25 H.P. and above registered with the Board to know estimates or firm quotations are issued by the Board and payment is not made by the applicants as on 1.11.86. The deposit is to be refunded on completion of seven years from the date of release or from the deemed

date of release of connection in five half yearly installments. The deposit amount will carry interest at the rate of 5% p.a.. This loan is in addition to the service loan and service connection and other charges such as security deposit etc. payable under the Board's conditions etc. The respondent vide, its letter dated 5.11.86, annexure B demanded Rs.1,73,750/- for service loan and service connection charges and Rs.12 lacs as per the Development Loan Amount Scheme. Hence this Special Civil Application before this Court.

#. On 7.1.87, by consent, interim relief has been granted by this Court on the following terms:

On the first petitioner paying to the respondent

No.1 Rs.1,73,750/- specified in paragraph 6 of the letter dated 5.11.86 (Annexure B to the petition) and also paying under protest Rs.12 lacs specified in paragraph 7 of the said letter, the respondent No.1 shall proceed to give power connection to the petitioner No.1 as per the said letter. The petitioner No.1 shall pay security deposit of Rs.9,86,750/- specified in paragraph 8 of the said letter before release of power supply. Petitioner No.1 agrees that in the event of revision of service line and service connection charges of Rs.1,73,750/- and securing amount of Rs.9,86,750/- in view of paragraph 9 of the said letter dated 5.11.86, the petitioner No.1 shall pay the same under protest within 30 days of the intimation of the revision by respondent No.1 to the petitioner No.1, subject to its right to dispute the liability to pay the revised amount."

#. The demand amount under the letter dated 5.11.86 has been paid by the petitioner and there is no dispute that the Board has provided electricity connection to the petitioner. After filing of this Special Civil Application and deposit of the amount by the petitioner under the consent interim relief granted by this Court, the Board under its Resolution No.5792 dated 26.3.87 resolved that the Development Loan Amount Scheme approved under its Resolution No.5599 dated 14.10.86 and made effective from 1.11.86 be suspended with immediate effect and further that the Development Loan Amount already paid by the consumers for power be retained by the Board. The petitioner-Company vide its letter dated 23.4.87 demanded from the Board, refund of the loan deposit amount of Rs.12 lacs but the Board under its reply dated 25.5.87 informed the company that the Board has decided to retain

the Development Loan Amount already paid by consumers. The petitioner thereafter filed Civil Application No.877 of 1987 praying therein for amendment of writ petition which came to be accepted by this Court on 20th June 1987. The petitioner, by way of amendment, has brought all these subsequent facts and events on the record of the Special Civil Application and further the petitioner has amended the prayer clause and prayed to declare that the Board's decision in its Resolution No.5792 dated 26.3.87 to retain the Development Loan Amount already paid by the petitioner for power is null and void. Further prayed has been made to direct the respondents to refund to the petitioner, the amount of Rs.12 lacs paid under protest as Development Loan Amount with interest thereon at 21% p.a. from the date of the deposit till payment.

#. Reply to the Special Civil Application has been filed by respondent and therein they justified the condition No.8 introducing the scheme of Development Loan Amount. It has been given out in this reply that the Board, vide its Resolution No.5792 dated 26th March 1987 resolved to suspend further operation of the scheme in pursuance of the letter of the Government dated 12th March 1987. The Court has directed the learned counsel for respondents to produce on record the aforesaid letter of the Government which has been produced on record of this petition.

#. The learned counsel for the petitioner contended that the scheme introduced by incorporating condition No.8 is nothing but a condition for extracting a forced loan from the consumer inconsistent with the rights of the consumers and obligation of the Board. This action of the respondent imposes upon the petitioner a restriction on its right to carry on any occupation, trade or business which is unreasonable and which is not in public interest. It has further been contended that the imposed condition for payment of loan deposit amount compelled the applicant for power supply covered by the condition to pay forced loan for a long duration of seven years and at a grossly unreasonable rate of interest of 5% p.a., which is highly unreasonable and unjustified. In support of this contention, the learned counsel for the petitioner placed reliance on the decision of Apex Court in the case of Patel Gordhandas Hargovindas & Ors. v. The Municipal Commissioner, Ahmedabad & Anr., reported in AIR 1963 SC 1742. It is further contended that the scheme has already been suspended under the Resolution No.5792 dated 26th March 1987 and the decision of the Board to retain the Development Loan Amount already paid is wholly arbitrary and unjustified. It is a case of

illegal detention of heavy amount of petitioner of Rs.12 lacs and as such, the respondents are under obligation to refund the same together with interest thereon at the rate of 21% p.a. from the date of deposit till the payment.

#. On the other hand, the learned counsel for the respondents contended that the Board was within its competence to put such condition for supply of electricity to the petitioner and other consumers of the category to which the petitioner belongs and no exception can be there for petitioner. It is not a case where the scheme has altogether been taken away or withdrawn or cancelled. It is only on the Government direction that the scheme has been suspended at a later point of time and as such the amount paid by the petitioner could have legitimately been retained by the Board. It has lastly been contended that the petitioner otherwise also is not entitled for any interest on the amount of loan deposit under the scheme under any law including the Interest Act, 1978. In support of the contention, the learned counsel for the respondents placed reliance on the decision of Hon'ble Supreme Court in the case of Ferro Alloys Corporation Ltd. v. A.P. State Electricity Board & Anr., reported in AIR 1993 SC 2005.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties. The learned counsel for the petitioner has taken me through various provisions of the Electricity (Supply) Act, 1948, Indian Electricity Act, Gujarat Electricity Board, Condition and Miscellaneous Charges for Supply of Energy, and Interest Act, 1978.

##. The subsequent developments which have taken place after filing of this Special Civil Application are as under:

- 1) Under the Draft Board Resolution No.5792 dated 26th March 1987, the Board resolved to suspend the Development Loan Amount Scheme approved under BR No.5599 dated 14th October 1986, made effective from 1.11.86. Under the aforesaid Resolution, it has further been resolved that the Development Loan Amounts already paid by the applicants be retained by the Board.
- 2) The Resolution No.5792 dated 26th March 1987 has been passed in pursuance to the letter dated 12th March 1987 of the Government. Under the said letter of the Principal Secretary, Industries,

Mines and Energy Department, Government of Gujarat, the Board has been requested that the aforesaid scheme be suspended as the Government has received a number of representations against the scheme and the Government, after careful consideration, has decided that the scheme be suspended till further instructions from the Government.

- 3) Under the Court's order dated 7.1.87, the petitioner has deposited Rs.12 Lacs towards the Development Loan Amount Scheme with the Board.
- 4) The petitioner has been given electricity connection thereafter on deposit of the aforesaid amount in pursuance of the Court's order.
- 5) The amount which has been deposited by the petitioner under the head "Development Loan Amount Scheme" has already been paid off by the Board to the petitioners by adjustment of the same in the electricity consumption bill of the petitioner.
- 6) The petitioner has already been paid 5% interest on the amount deposited by the petitioner under the Development Loan Amount Scheme.
- 7) The scheme has not been given effect to thereafter and it is still lying under suspension for all these years.

##. Under the letter dated 12th March 1987, a note has been appended, "please collect details of any such Development Loan Scheme of other States and thereafter put up the proposal for the consideration of the Board". After 12th March 1987, nothing has been produced by the Board showing that it has collected the details of any such Development Loan Amount Schemes of other States. What ultimately the Government has decided in the matter is also not known. But the fact on which there is no dispute is that this scheme has remained in operation from 1st November 1986 to 12th March 1987 and only those consumers who have applied and taken connection of electricity during this period were subjected to this scheme. Rest of the applicants earlier and after these date have not been saddled of with this burden. In view of the subsequent events and developments which have taken place, and particularly in view of the Resolution No.5792 dated 26th March 1987 of the Board and the letter of the Government dated 12th March 1987, it is not

necessary in this case to go on the question of validity of the scheme itself. There is yet another reason which warrants the aforesaid course to be taken in this matter. The amount which has been deposited by the petitioner under the aforesaid scheme has been repaid by the Board and interest at the rate of 5% has also been paid.

##. The only dispute which now survives in the case is against the action of the respondent-Board to withhold the amount of Rs.12 Lacs deposited by the petitioner under the scheme. The contention of the counsel for petitioner, as noticed earlier, was that it was a case of forced loan from the petitioner by the Board and as such, the petitioner is entitled on this amount interest at the rate of 21% p.a. However, it is a fact on which there is no dispute that this scheme was discontinued by the Board by suspending the same on the direction of the government as contained in its letter dated 12th March 1987. In the letter dated 12th March 1987, the Government has nowhere directed the Board that while suspending the said scheme it may retain the amount which has been deposited by the consumers in response to the said scheme for taking electricity connection. So it is a matter now to be decided by the Government whether the Board while suspending the scheme under its directions could have resolved to retain the amount or not.

##. Otherwise also, though I am not expressing any final opinion, prima-facie it seems to be a case of hardship to those applicants who desired to have electric connection during the currency of the relevant period of the scheme. Further, it was for the Government to decide what it intended to do with the amount deposited by consumers under the Development Loan Amount Scheme and how that amount has to be dealt with by the Board on suspension of the said scheme. The Government is the best person to decide the matter. Moreover, for one another reason, this matter has to be considered by the Government. In the letter to the Board, in pursuance of which the Board has put under suspension the aforesaid Scheme, the Government has nowhere stated that the amount which has been deposited by the consumers for taking new connection under the Scheme should be retained by the Board. The matter would have been different where such a condition would have been put by the Government, and in that case, the validity of such condition would have been examined by this Court. But this condition to retain the amount has been adopted by the Board on its own without there being any such direction from the Government. So, the Government is the proper authority which should have first gone into this matter. However, these are the

matters to be decided by the Government. What further has transpired in the matter has also not been brought on the record of this case by the parties.

##. So it is a case where the matter has to be sent to the Government to decide the grievance of the petitioners regarding the claim of interest on the amount deposited by the petitioners under the Development Loan Amount Scheme in pursuance of the order of this Court. In the result, this Special Civil Application is disposed of in terms that the petitioners, if they so desire, may make a representation in respect of their claim of interest on the amount of deposit made by them under the Development Loan Amount Scheme, at the rate higher than 5%, to the Secretary, Industries Mines & Energy Department, Government of Gujarat, Gandhinagar, within a period of one month from the date of receipt of certified copy of this order. On receipt of this representation, it is expected of the said officer to decide the same after hearing the petitioners and the Board within three months of receipt of representation. In case the claim of the petitioners is accepted for the interest at the rate higher than 5%, by the said officer, the Board shall pay the amount to the petitioners within a period of one month from the date of such order made by the said officer. In case the claim of the petitioners is not acceptable, the officer concerned shall pass a reasoned order and a copy of the same shall be sent to the petitioners by registered post. The Special Civil Application is disposed of with aforesaid directions. Rule stands disposed of accordingly. No order as to costs.

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